AMENDMENT TO CONCESSION AGREEMENT

This Amendment to the February 2, 2009, Concession Agreement by and between THE CITY OF SEATTLE ("City") and ARENA SPORTS MAGNUSON PARK, LLC, a Washington limited liability company ("Concessionaire"), is effective as of April 22, 2010 (the "Effective Date").

Agreement

In consideration of the mutual promises contained herein, the parties hereby agree to amend the Agreement as follows:

- 1. Exhibits. Subsection 1.8 of the Agreement is amended to include a new Exhibit F, as indicated below:
 - 1.8 Exhibits. The following exhibits are made a part of this Agreement:

Exhibit A - USA Deed

Exhibit B - Legal Description

Exhibit C – Parking Area Depiction

Exhibit D - Public Benefit Requirements

Exhibit E - Initial Alterations Plan

Exhibit F - Floor Plan with Access Towers

- 2. Term. Section 3 of the Agreement is amended as indicated below:
 - 3.1 Term. This Agreement shall commence on the Effective Date and terminate forty (40) years after the Rent Commencement Date, unless the Agreement is terminated earlier as provided herein. Concessionaire shall have exclusive access to the Premises commencing on the Possession Date in order for Concessionaire to design and construct the Initial Alterations.
 - 3.2 [Reserved].
- 3.3 City's Right to Terminate. Commencing on the tenth (10th) anniversary of the Rent Commencement Date, the City shall have an option to terminate this Agreement if Concessionaire fails to fully renovate and occupy the northwest and southwest access towers located within the Premises and depicted on Exhibit F hereto, in accordance with all applicable building code and historic preservation requirements. The City may exercise its termination option by delivering written notice to Concessionaire specifying the effective termination date which shall in no event be less than two (2) years from the date of said notice. If the City exercises such option, the City shall pay Concessionaire the amount of its eligible capital expenditures for the Premises to the extent not previously offset, and Concessionaire shall no longer be entitled to any Capital Improvement Rental Offset

under this Agreement. Thereafter, this Agreement shall continue in effect until the effective termination date subject to earlier termination by Concessionaire upon thirty (30) days' written notice to the City.

- 3. <u>Capital Improvement Rental Offset</u>. Subsection 4.3 of the Agreement is amended as indicated below:
 - 4.3 Capital Improvement Rental Offset. Except as provided below with respect to expenditures eligible for Federal rehabilitation tax credits, throughout the Term, Concessionaire shall be entitled to apply as an offset against up to 77% of each monthly Base Rent payment, the actual remaining unamortized costs incurred by Concessionaire and directly related to the design, permitting and construction of the Initial Alterations and any subsequent capital improvements to the Premises approved by the Superintendent pursuant to Section 11, below. These costs may include hard and soft costs such as, but not limited to, labor, materials, architecture and engineering fees, permits, licensing fees, equipment costs or rental fees, construction or project management fees, sales tax, and consultants' fees, but shall not include interest on construction financing. Prior to commencement of construction of the Initial Alterations or subsequent capital improvement to the Premises, Concessionaire shall submit to the Superintendent a budget for the same (the "Construction Budget"). Within thirty (30) days after receipt of the Construction Budget, the Superintendent, in his or her reasonable discretion, shall certify the total amount of construction costs of the Initial Alterations (or subsequent capital improvement to the Premises) that the Superintendent approves as eligible for Concessionaire's Capital Improvement Rental Offset. Not later than six (6) months after Concessionaire receives a certificate of occupancy for the Initial Alterations (and upon final completion of any later Superintendent-approved capital improvement). Concessionaire shall provide the Superintendent with an accounting of its actual costs associated with the capital improvements completed to the Premises, together with such supporting documentation as the Superintendent may reasonably request. The Superintendent, in his or her reasonable discretion, shall certify the final amount of costs incurred by Concessionaire in connection with such improvements and this amount shall constitute the amount of Concessionaire's Capital Improvement Rental Offset.

Each month throughout the Term, Concessionaire shall report to the Parks Finance Director, or his or her designee, the dollar amount of Capital Improvement Rental Offset it is applying to such Base Rent. If the aggregate amount of capital expenditures subject to the Capital Improvement Rental Offset exceeds the total Base Rent payable under this Agreement during the Term, Concessionaire shall not have any right to recover from the City the balance. Unless the Superintendent agrees otherwise, upon the termination or expiration of this Agreement any remaining balance shall be deemed to be donated to the City, and the improvements shall be surrendered with the Premises in accordance with Sections 11.4 and 14.

The parties anticipate that Concessionaire will be applying for Federal historic rehabilitation tax credits pursuant to Internal Revenue Code Section 47 ("Rehabilitation Tax Credit") as part of its financing for the Initial Alterations. If Concessionaire receives any Rehabilitation Tax Credit, then the aggregate amount of costs of the Initial

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Alterations that Tenant may apply against Base Rent pursuant to this Section 4.3 shall be reduced by an amount equal to seventy-five percent (75%) of the net amount of the Rehabilitation Tax Credit less costs incurred by Tenant in connection with its application and processing necessary to obtain the Rehabilitation Tax Credit. For purposes of illustration, if the costs of the Initial Alterations is \$700,000.00, the amount of the Rehabilitation Tax Credit is \$110,000.00 and Tenant incurs costs of \$10,000.00 in connection with its application for the Rehabilitation Tax Credit, Tenant may apply up to \$625,000.00 against Base Rent in accordance with this Section 4.3, calculated as follows: \$700,000.00 - 75% (\$110,000.00 - \$10,000.00).

- 4. High Capacity Events. Subsection 8.2 of the Agreement is amended, as indicated below:
 - 8.2 <u>High Capacity Events</u>. Magnuson Park has limited capacity to handle multiple events with large numbers of attendees. Therefore, if the Concessionaire reasonably anticipates that more than 250 500 people will attend any event on the Premises at the same time, the Concessionaire shall provide the City with no less than thirty (30) days advance written notice. If the City determines that the event would conflict with other high capacity events that have already been scheduled to take place at the same time, the City shall notify the Concessionaire within five (5) business days after receipt of the Concessionaire's notice. Upon receipt of such notice, the Concessionaire must either reschedule the event or reduce the size of the event to less than 250 500 attendees.
- 5. <u>Conflict</u>. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the provisions of this Amendment shall control.
- 6. No Other Modification. Except as modified by this Amendment, the Agreement remains in full force and effect.
- 7. <u>Counterparts</u>. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall constitute part of a single Amendment.
- 8. <u>Facsimile Signatures</u>. Each party hereto, and their respective successors and assigns, shall be authorized to rely upon the signatures of all of the parties hereto on this Amendment that are delivered by facsimile as constituting a duly authorized, irrevocable, actual, current delivery of this Amendment.

IN WITNESS WHEREOF, the parties hereto have affixed or caused to be affixed their respective signatures with the intent to be bound by the terms hereof as of the Effective Date.

City:

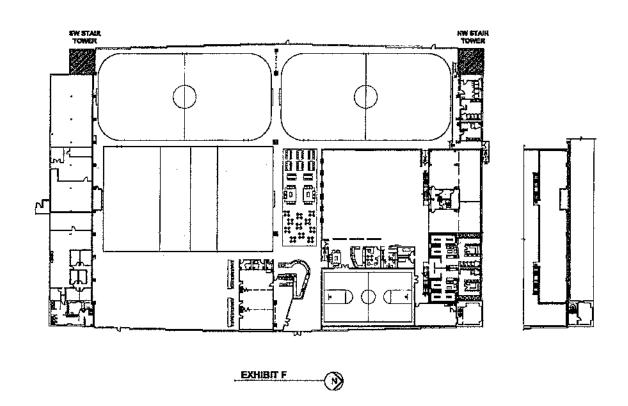
THE CITY OF SEATTLE

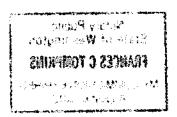
By:	Church 1
Name	Elfais Tophar Collian
Its Su	perintendent
Concessio	onaire:
ARENA	SPORTS MAGNUSON PARK, LLC
By:	
Name:	Don Crowe
to.	CED

By its Department of Parks and Recreation

STATE OF WASHINGTON)		
COUNTY OF KING) ss.		
On this 22 day of		
In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.		
Notary Signature Notary Public in and for the State of Washington, residing at King County My commission expires OCTOBER 7, 2011 Motary Signature Notary Public in and for the State of Washington, residing at King County My commission expires 10 / 7 / 11		
8		
STATE OF WASHINGTON)) ss.		
COUNTY OF King) ss.		
On this <u>a</u> day of <u>A or l</u> , 2010, before me personally appeared <u>Don Crowe</u> , to me known to be the <u>Ceo</u> of Arena Sports Magnuson Park, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument on behalf of said limited liability company.		
In Witness Whereof I have hereunto set my hand and affixed my official seal the day and		
year first above written. Notary Public		
State of Washington Frances Jampan		
Notary Signature Notary Public in and for the State of Washington,		
August 6, 2012 residing at Deatt 4		
My commission expires 8/6/2012		

Exhibit F
Floor Plan with Access Towers





CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement") is entered into this _____ day of ______, 2008, by and between THE CITY OF SEATTLE ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and Arena Sports Magnuson Park, LLC ("Concessionaire"), a limited liability company organized under the laws of the State of Washington.

RECITALS

- A. Whereas, the City owns certain land totaling nine (9) acres, more or less, that the City obtained from the United States of America ("USA") as surplus property, known as US Naval Air Station Sand Point/Magnuson Park, and deeded to the City by quitclaim deed recorded on September 10, 2001, in the records of King County at Recording Number 20030218001345, and attached hereto as Exhibit A ("USA Deed"); and
- B. Whereas, Condition No. 3 of the USA Deed provides that the property "shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency... However, nothing in this provision shall preclude the [City] from providing recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior;" and
- C. Whereas, the City and Concessionaire desire to provide an indoor participant sports facility as more specifically described below on a portion of site commonly referred to as Building 27 for the use and benefit of the general public; and
- D. Whereas, the City is satisfied that provision of additional services and facilities at Building 27 is in the City's best interest; and

AGREEMENT

IN CONSIDERATION of the mutual covenants contained herein, City and Concessionaire covenant and agree as follows:

- 1. <u>Agreement Data; Exhibits</u>. The following terms have the following meanings, except as otherwise specifically modified in this Agreement:
- 1.1 <u>Premises</u>. Building 27 at Warren G. Magnuson Park situated on real property described on Exhibit B.
- 1.2 <u>Effective Date</u>. The date when this Agreement is signed by the Superintendent.

- 1.3 <u>Possession Date.</u> The date when Concessionaire receives a building permit from the Seattle Department of Planning and Development ("DPD") to construct the Initial Alterations to the Premises, as defined in Sections 7.1 and 7.2.
- 1.4 <u>Rent Commencement Date</u>. Upon Concessionaire's receipt of a certificate of occupancy from DPD for the Initial Alterations.
- 1.5 <u>Expiration Date</u>. The date that is twenty (20) years from the Rent Commencement Date, unless the Term is extended as provided in Section 3.2.
- 1.6 <u>Rent and Additional Charges</u>. The term "Rent" as used herein, means Base Rent and Percentage Rent.
 - 1.6.1 <u>Base Rent.</u> \$21,250 per month (\$255,000 annually).
- 1.6.2 <u>Percentage Rent.</u> Ten Percent (10%) of Concessionaire's gross receipts from short-term rentals of the Premises to third parties for corporate conferences, meetings, promotions and similar private events ("Commercial Events").
- 1.6.3 <u>Additional Charges.</u> Whether or not so designated, all other sums due from Concessionaire under this Agreement shall constitute Additional Charges, payable when specified in this Agreement and if not specified, then upon Concessionaire's receipt of the City's invoice therefor.
 - 1.7 Notice Addresses.

To City:

The City of Seattle

Department of Parks and Recreation

Attention: Manager

Contracts and Business Resources

6310 NE 74th Street Seattle, WA 98105

To Concessionaire:

Arena Sports Magnuson Park LLC

9040 Willows Road Redmond, WA 98052

1.8 Exhibits. The following exhibits are made a part of this Agreement:

Exhibit A – USA Deed

Exhibit B - Legal Description

Exhibit C - Parking Area Depiction

Exhibit D - Public Benefit Requirements

Exhibit E – Initial Alterations Plan

2. Premises.

- 2.1 <u>Grant</u>. Subject to all of the terms and conditions contained herein, City hereby assigns to Concessionaire and Concessionaire hereby accepts from City, the use of those certain premises referenced in Section 1 (the "Premises").
- 2.2 Conditions in USA Deed. This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the USA Deed. Concessionaire shall use the Premises in strict accordance with all terms and conditions imposed by the United States of America as set forth in the USA Deed that pertain to the use of the Premises including, but not limited to, the terms and conditions regarding hazardous materials, lead based paints, asbestos, and historic resources contained in paragraphs 8, 9, 10, 11, 12, and 13 of the USA Deed. In the event of any conflict between the terms and conditions of the USA Deed and any provision of this Agreement, the terms of the USA Deed shall control. Violations of the said terms and conditions of the USA Deed may be grounds for reversion to the United States of America of the Premises, in the discretion of the United States of America and with no compensation to either the Concessionaire or the City from the United States of America.
 - 2.3 <u>Condition</u>. Concessionaire accepts the Premises in their "as is" condition.
- 2.4 <u>License</u>. Concessionaire and its licensees, invitees and customers may use the public areas of Magnuson Park (the "Park") as the same may be constituted from time to time, in common with the general public and other Park occupants and their respective licensees, invitees, customers and employees. City shall at all times have exclusive control and management of the Park; provided, however the City agrees to exercise such control and management of the Park in a manner that does not unreasonably interfere with Concessionaire's business operations on the Premises.
- 2.5 Parking. Throughout the Term, the City shall maintain a minimum of 300 public parking stalls within the Parking Area depicted on Exhibit C. Concessionaire acknowledges that this Agreement does not grant Concessionaire the exclusive use of any parking stalls adjacent to the Premises or elsewhere in the Park. Access to such public parking by Park users, Concessionaire and its employees and customers shall be governed by Park rules as they may be amended from time to time by the Superintendent. The City and Concessionaire acknowledge and agree that they will use their best efforts to negotiate an agreement with the tenant of Building 11 to further define the rights and obligations of the parties with regard to parking.
- 2.6 <u>Permitted Use</u>. Beginning on the Rent Commencement Date, Concessionaire shall use the Premises for an indoor participant sports facility providing, among others, programs in soccer, basketball and volleyball; a health studio, as defined in RCW 19.142.010(3); and such accessory uses as storage, offices, locker rooms and meetings.

Concessionaire may sell food and beverages at the Premises primarily to accommodate Concessionaire's patrons; provided, however, that in no event shall Concessionaire conduct any food service operation that (i) includes outdoor seating dedicated exclusively to food and beverage service, (ii) contains interior seating areas dedicated exclusively for use by food and beverage customers with more than a total of fifty (50) seats, or (iii) includes signage attached to the exterior of Building 27 or, if attached to the interior, is visible from the exterior of Building 27, without the Superintendent's written consent; and provided, further, that Concessionaire shall not sell alcoholic beverages unless the Superintendent approves of such sale, in advance.

Concessionaire shall not operate, or permit to be operated, on or from the Premises a general purpose child care or day care facility except one that (i) accepts children for less that four (4) hours per day or (ii) accepts children for more than four (4) hours per day but for not more than two consecutive weeks and is operated primarily to serve Concessionaire's patrons and for camps.

Concessionaire may license use of all or part of the Premises to third parties on an intermittent basis involving not more than five (5) consecutive days for any one event, or collectively, for not more than thirty (30) days in any one calendar year for Commercial Events. Unless the City agrees otherwise, Concessionaire shall ensure that all licensees comply with all legal requirements applicable to their intended use.

2.7 <u>Continuous Operation</u>. Concessionaire shall conduct its business operations on the Premises continuously throughout the Term and shall keep the Premises open for business during the usual business hours of each and every business day as is customary for businesses of like character except for approved closures for remodeling, repair or renovation.

3. Agreement Term.

- 3.1 Term. This Agreement shall commence on the Effective Date and terminate 20 years from the Rent Commencement Date, unless the Agreement is terminated earlier as provided herein. Concessionaire shall have exclusive access to the Premises commencing on the Possession Date in order for Concessionaire to design and construct the Initial Alterations.
- 3.2 Extended Term. If Concessionaire has provided all of the Public Benefits referenced in Section 5 and more particularly described in Exhibit D, and is not otherwise in default under this Agreement, Concessionaire shall have the option to extend this Agreement for two (2) successive terms of five (5) years, each (the "Extended Terms"), on the same terms and conditions set forth herein except that the renewed Agreement shall contain no further renewal options. Concessionaire may extend the Term by giving City written notice of its intention to do so at least one (1) year prior to the beginning of each Extended Term. As used in this Agreement, "Term" means the initial and any Extended Term.

3.3 <u>City's Right to Terminate for Public Convenience</u>. The City shall have an option exercisable one time for each five (5) year period during the Term of this Agreement, with the first five (5) year period commencing on the tenth (10th) anniversary of the Rent Commencement Date, to terminate this Agreement for public convenience. The City may exercise its termination option by written notice to Concessionaire specifying the effective termination date which shall in no event be less than two (2) years from the date of said notice. If the City exercises such option it shall pay Concessionaire the amount of Concessionaire's Capital Improvement Rental Offset not previously offset, and Concessionaire shall no longer be entitled to any Capital Improvement Rental Offset under this Agreement. Thereafter, this Agreement shall continue in effect on a month-to-month basis, terminable by Concessionaire upon thirty (30) days' written notice to the City.

4. Rent.

- 4.1 Rent Payment. Commencing on the Rent Commencement Date and, thereafter, in advance, on the 20th day of each month, and subject to the provisions of Section 4.3, Concessionaire covenants to pay City at the address and to the account specified by City, without notice or demand, in lawful money of the United States, the monthly Base Rent and any Percentage Rent due from Commercial Events that occurred during the immediately preceding month. Rent and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial month during the Agreement Term.
- Adjustments to Base Rent. Beginning on the first anniversary of the Rent Commencement Date and every year thereafter until the expiration or termination of this Agreement (each, a "Rent Adjustment Date"), the monthly Base Rent payable by Concessionaire shall be increased to an amount determined by multiplying the monthly Base Rent payable during the month immediately preceding the Rent Adjustment Date by a fraction, the denominator of which shall be the Consumer Price Index for All Urban Consumers (All Items) in the Seattle-Tacoma-Bremerton region (1982-84 = 100) ("CPI"), published by the Bureau of Labor Statistics, United States Department of Labor, in effect as of the date which is twelve (12) months prior to the Rent Adjustment Date, and the numerator of which shall be the CPI in effect as of the date immediately preceding the Rent Adjustment Date; provided, however, that in no event shall the monthly Base Rent decrease as a result of such adjustment.

By way of example only, if the CPI on the commencement date of this Agreement is 100 and the CPI most recently issued prior to the first Rent Adjustment Date is 110 and the annual Base Rent due under this Agreement is \$60,000, then the total CPI adjustment would be 10% and annual Base Rent under this Agreement would increase to \$66,000 effective as of the Rent Adjustment Date.

In no event shall the Base Rent, as adjusted for any period, be less than Base Rent payable during the immediately preceding period. In the event the CPI is discontinued, the parties shall agree upon another similar index to be used to calculate the contemplated

adjustment and, in the event of an inability to agree, the parties shall request the American Arbitration Association or its successor to appoint a qualified arbitrator to establish an appropriate adjustment standard to measure inflation.

Capital Improvement Rental Offset. Throughout the Term, Concessionaire 4.3 shall be entitled to apply as an offset against up to 77% of each monthly Base Rent payment, the actual remaining unamortized costs incurred by Concessionaire and directly related to the design, permitting and construction of the Initial Alterations and any subsequent capital improvements to the Premises approved by the Superintendent pursuant to Section 11, below. These costs may include hard and soft costs such as, but not limited to, labor, materials, architecture and engineering fees, permits, licensing fees, equipment costs or rental fees, construction or project management fees, sales tax, and consultants' fees but shall not include interest on construction financing. Prior to commencement of construction of the Initial Alterations or subsequent capital improvement to the Premises, Concessionaire shall submit to the Superintendent a budget for the same (the "Construction Budget"). Within thirty (30) days after receipt of the Construction Budget, the Superintendent, in his or her reasonable discretion, shall certify the total amount of construction costs of the Initial Alterations (or subsequent capital improvement to the Premises) that the Superintendent approves as eligible for Concessionaire's Capital Improvement Rental Offset. Not later than six months after Concessionaire receives a certificate of occupancy for the Initial Alterations (and upon final completion of any later Superintendent-approved capital improvement), Concessionaire shall provide the Superintendent with an accounting of its actual costs associated with the capital improvements completed to the Premises, together with such supporting documentation as the Superintendent may reasonably request. The Superintendent, in his or her reasonable discretion, shall certify the final amount of costs incurred by Concessionaire in connection with such improvements and this amount shall constitute the amount of Concessionaire's Capital Improvement Rental Offset.

Each month throughout the Term, Concessionaire shall report to the Parks Finance Director, or his or her designee, the dollar amount of Capital Improvement Rental Offset it is applying to such Base Rent. If the aggregate amount of capital expenditures subject to the Capital Improvement Rental Offset exceeds the total Base Rent payable under this Agreement during the Term, Concessionaire shall not have any right to recover from the City the balance. Unless the Superintendent agrees otherwise, upon the termination or expiration of this Agreement or any renewal of this Agreement resulting from negotiations outlined in Section 3.2 above, that authorizes further application of the rental offset, any remaining balance shall be deemed to be donated to the City, and the improvements shall be surrendered with the Premises in accordance with Sections 11.4 and 14.

4.4 <u>Public Program Rental Offset</u>. Concessionaire may request a Public Program Rental Offset against Base Rent to reflect expenditures for programming that is available to the public (such as scholarship programs or free public classes) above and beyond those public benefits identified in Section 5 that are an express condition of this Agreement. In the annual Management and Operations Plan described in Section 8.2,

Concessionaire may identify the amount of Public Program Rental Offset it is requesting for the upcoming calendar year based upon public programming it provided during the preceding calendar year and any other justification for the request. The Superintendent will respond to the request within thirty (30) days, stating the amount, if any, of the Public Program Rental Offset allowed for the upcoming calendar year. The amount of the Public Program Rental Offset for a given year shall rest in the Superintendent's sole discretion. Concessionaire shall be entitled to apply any annual Public Program Rental Offset that the Superintendent approves in a given year against up to a maximum of thirteen percent (13%) of each monthly Base Rent payment during that year. Any Public Program Rental Offset may be applied by Concessionaire in addition to the Capital Improvement Rental Offset described in Section 4.3.

- 5. Public Benefits. Each year during the Term of this Agreement, Concessionaire shall provide, at a minimum, the public benefits described in Exhibit D. Together with the Management and Operations Plan described in Section 8.2, Concessionaire shall provide a Public Benefits Report each year, supported by documentation that, to the Superintendent's reasonable satisfaction, demonstrates Concessionaire's actual progress during the preceding year in providing Public Benefits. The City shall be deemed to have approved the Public Benefits Report unless the Superintendent delivers written objections thereto to Concessionaire within sixty (60) days after the Superintendent receives the report. If the Superintendent delivers written objections to the Report within the sixty (60) day period, the Superintendent and Concessionaire shall negotiate in good faith a written agreement detailing subsequent actions to be taken by Concessionaire that will satisfy the Superintendent's concerns. The Superintendent shall submit a copy of each annual approved Public Benefits Report to the Seattle City Clerk. Concessionaire's failure to comply with the requirements of this Section shall constitute a Default by Concessionaire, subject to the provisions of Section 21, below.
- 6. <u>Late Charge: Interest</u>. If Concessionaire fails to pay the City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

Conditions Subsequent.

- 7.1 <u>Concessionaire Building Alteration Requirements</u>. The parties acknowledge and agree that the rehabilitation of the Premises is a fundamental purpose of this Agreement and Concessionaire agrees to use every commercially reasonable effort to complete the Initial Alterations and obtain a certificate of occupancy for the Permitted Use within 48 months of the Effective Date. Concessionaire's conceptual plan for the Initial Alterations is described in Exhibit E. The City shall provide no funds for the Initial Alterations. If Concessionaire fails to complete the Initial Alterations by the above date, the City may terminate this agreement by providing written notice to Concessionaire and the parties shall have no further rights or obligations with respect to one another.
- 7.2 <u>Approval of Initial Alterations Plan</u>. Concessionaire shall submit to the Superintendent for review and approval, in his or her reasonable discretion, plans and

specifications detailing the initial improvements Concessionaire proposes to make to the Premises, which plans and specifications shall, to the extent commercially reasonable, incorporate environmentally sustainable design principles (the "Initial Alterations Plan"). The Superintendent shall approve the Initial Alterations Plan or provide Concessionaire with written comments thereon within 90 days. If the Superintendent does not deliver written comments on Concessionaire's Initial Alterations Plan within 90 days, then the Initial Alterations Plan shall be deemed approved by the Superintendent for purposes of this Agreement, only. Once the Superintendent delivers written comments, City and Concessionaire shall negotiate in good faith such revisions to the Concessionaire's Initial Alterations Plan as will address the Superintendent's concerns. Concessionaire acknowledges that the Premises are located within the Sand Point Historic District and that proposed alterations must be reviewed by the Sand Pont Historic Preservation Coordinator. Concessionaire agrees to consult with Parks staff throughout the design process to ensure that such review occurs concurrent with the Superintendent's review process.

- 7.3 Concessionaire Funding Responsibilities. Concessionaire shall be fully responsible for and shall promptly pay all costs associated with the Initial Alterations, including, but not limited to, all design, permitting and construction costs. Prior to starting construction, Concessionaire shall present evidence to the reasonable satisfaction of the Parks Finance Director that it has access to sufficient funds to complete the Initial Alterations. If Concessionaire fails to present satisfactory evidence, the City may terminate this agreement by providing written notice to Concessionaire and the parties shall have no further rights or obligations with respect to one another.
- 7.4 <u>Land Use Code Amendments.</u> Concessionaire and the Superintendent shall work together to develop and propose to the City Council amendments to Seattle Municipal Code Chapter 23.72 (Sand Point Overlay District) that would allow the Permitted Use of the Premises under this Agreement. If applicable land use ordinances, rules or regulations do not allow the Permitted Use of the Premises on or before December 31, 2009, either party may terminate this Agreement by providing written notice to the other not later than January 31, 2010, and the parties shall have no further rights or obligations with respect to one another under this Agreement.
- 7.5 Shoreline Use Restrictions Resolution. Concessionaire and the Superintendent shall work together to resolve potential issues associated with Seattle Shoreline Master Program (SMC Chapter 23.60) regulations by December 31, 2011, to allow the Permitted Use. If the potential issues are not resolved on or before the above date, either party may terminate this Agreement by providing written notice to the other party not later than January 31, 2012, and the parties shall have no further rights or obligations with respect to one another under this Agreement.
- 7.6 Approval of Signage Plan. Prior to January 1, 2009, Concessionaire shall submit to the Superintendent for review and approval, in his or her sole discretion, a plan for exterior signage for the Premises and for the Park that is consistent with the Magnuson Park Signage and Wayfinding Master Plan. The Superintendent shall approve

the plan or provide written comments thereto by February 15, 2009. If the Superintendent does not deliver to Concessionaire written comments on Concessionaire's signage plan by February 15, 2009, then Concessionaire's signage plan shall be deemed approved by the Superintendent. If the Superintendent objects to any element of Concessionaire's signage plan by February 15, 2009, City and Concessionaire shall negotiate in good faith revisions to the Concessionaire's signage plan. The Superintendent shall approve or deny the plan by June 1, 2009. If the Concessionaire's signage plan is not approved by June 1, 2009, then Concessionaire may terminate this Agreement by providing written notice to the City not later than July 1, 2009, and the parties shall have no further rights or obligations with respect to one another.

7.7 Park Signage and Access Improvements. On or before April 30, 2009, both parties shall agree on a specific plan to improve signage and access, consistent with the Magnuson Park Signage and Wayfinding Master Plan. The plan shall include a funding plan that allocates funding responsibility proportionally to park tenants based on relative benefit to each tenant.

8. <u>Concessionaire's Operations.</u>

Use of Premises. Concessionaire shall use the Premises only for the Permitted Use. As City's willingness to enter into this Agreement with Concessionaire was predicated, in part, on the nature of Concessionaire's business, and the compatibility of such business with the use of the remainder of the Park, Concessionaire shall not use or permit the use of the Premises for any other business, or purpose, without City's prior written consent. Furthermore, Concessionaire's use shall be in strict accordance with all terms and provisions imposed by the United States of America as set forth in the USA Deed. Written concurrence by the National Park Service shall be required for other proposed use in conjunction with or in addition to the Permitted Use. Concessionaire shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Park as City, from time to time, may promulgate provided that such rules and regulations shall not materially interfere with Concessionaire's business operations related to the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Agreement, the terms of this Agreement shall control. Concessionaire shall maintain the Premises in a clean and neat fashion and to a standard found at other Parks properties similar in age, level of public use, and public visibility, permitting no objectionable odors to be emitted from the Premises and shall neither commit waste nor permit any waste to be committed thereon. Concessionaire shall not permit any accumulation of trash on or about the Premises. High Capacity Events. Magnuson Park has limited capacity to handle multiple events with large numbers of attendees. Therefore, if the Concessionaire reasonably anticipates that more than 250 people will attend any event on the Premises at the same time, the Concessionaire shall provide the City with no less than thirty (30) days advance written notice. If the City determines that the event would conflict with other high capacity events that have already been scheduled to take place at the same time, the City shall notify the Concessionaire within five (5) business days after receipt of the

Concessionaire's notice. Upon receipt of such notice, the Concessionaire must either reschedule the event or reduce the size of the event to less than 250 attendees.

- Management and Operations Plan. The Concessionaire shall prepare and 8.2 submit to the Superintendent, for his or her approval (which shall not be unreasonably withheld, conditioned or delayed), an annual plan for the management and operation of the Premises. The first plan shall be due on or before the date that is thirty (30) days prior to the Concessionaire's occupancy of the Premises for operational purposes, and subsequent plans shall be due on or before October 1st of each year thereafter. The Management and Operations Plan shall include such information as the Superintendent may reasonably specify from time to time for comparable Parks facilities, but at a minimum shall include a description of Concessionaire's proposed capital improvements to the Premises; the anticipated standard programming for the upcoming year; the anticipated Public Benefits programming for the upcoming year; the anticipated public programming expected to be eligible for Public Program Rental Offset; the number of people served, by age group; the dollar amount of scholarships given for the past year and anticipated to be given for the upcoming year, and criteria for scholarship awards. The City shall be deemed to have approved the Management and Operations Plan (and all uses and events noted therein) unless the Superintendent delivers to Concessionaire written objections thereto within sixty (60) days after submission of the Management and Operations Plan to City. If the Superintendent delivers written comments on the Management and Operations Plan within the sixty (60) day period, City and Concessionaire shall negotiate in good faith such revisions to the Management and Operations Plan as will satisfy the Superintendent's concerns. Concessionaire may amend or modify the plan from time to time with the prior approval of the Superintendent, which approval shall not be unreasonably withheld, conditioned or delayed. City shall be deemed to have approved the amended plan (and all uses and events noted therein) unless it rejects the amended plan in writing within twenty (20) days.
- 8.3 Non-Competing Uses. So long as this Agreement is in effect and Concessionaire continuously operates a health studio that exceeds 10,000 square feet on the Premises, City shall not permit the operation of another health studio that exceeds 5,000 square feet or a self-service health studio of any size within Magnuson Park without Concessionaire's written approval. As used in the preceding sentence, "continuously" means that the health studio maintains the hours that a typical facility of its kind maintains, subject to occasional closings for holidays, maintenance and repairs. This provision shall cease to apply if Concessionaire is in default under this Agreement and such default has remained uncured beyond the applicable cure period.
- 8.4 Adult Soccer Leagues, Games, Tournaments and Practices. Annually, in the Concessionaire's Management and Operations Plan, Concessionaire shall propose a schedule for Concessionaire's use of outdoor Park facilities for adult soccer leagues, games, tournaments and practices. The Superintendent will review the proposed schedule and allocate outdoor field usage to Concessionaire based on the City's field scheduling policies. Nothing in this Agreement shall be construed to confer upon Concessionaire or

its licensees any special scheduling considerations, rights, or privileges for outdoor Park facilities beyond those afforded to all other Park users.

- 8.5 Youth Soccer Leagues, Games, Tournaments and Practices. Annually, in the Concessionaire's Management and Operations Plan, Concessionaire shall propose a schedule for Concessionaire's use of outdoor facilities for youth soccer camps, leagues, games, tournaments and practices. The Superintendent will review the proposed schedule and allocate outdoor field usage to Concessionaire based on the City's field scheduling policies. Nothing in this Agreement shall be construed to confer upon Concessionaire or its licensees any special scheduling considerations, rights, or privileges for outdoor Park facilities beyond those afforded to all other Park users.
- 8.6 Fees. The fees that Concessionaire charges the public for use of its facilities and for program participation at the Premises shall not be more than 110 percent of the fees that that Concessionaire charges for the same or substantially similar programs and activities at its other facilities in the region.

8.7 Compliance with Laws; Nondiscrimination.

- 8.7.1 <u>General Obligation</u>. Concessionaire shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or any term or condition contained in the USA Deed, or for any purpose offensive to the standards of the community. Concessionaire shall promptly comply, at its sole cost and expense, and ensure that its contractors and agents comply, with all terms and conditions in the USA Deed, and with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the renovation or improvement of the Premises or condition or use or occupancy of the Premises during the term of this Agreement.
- 8.7.2 <u>Nondiscrimination</u>. Without limiting the generality of Section 8.7.1Concessionaire shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and The City of Seattle, including but not limited to those laws set forth in conditions 5 and 6 of the USA Deed and Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.
- 8.8 <u>Liens and Encumbrances</u>. Concessionaire shall keep the Premises free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Agreement or its use, improvement or occupancy of the Premises by Concessionaire or any of its principals, officers, employees or agents or subtenants. Concessionaire shall inform the City in writing of any lien filed against the Premises within ten (10) days of the filing date of the lien. If any lien is so filed against the Premises, Concessionaire shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security

acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion. The indemnification and defense obligation of this section shall survive the expiration or earlier termination of this Agreement.

- 8.9 <u>Hazardous Substances</u>. As used in this Agreement, "Hazardous Substances" means any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance.
- Lead Paint and Asbestos. Concessionaire is hereby informed and does acknowledge that the Premises contain lead-based paints and asbestos and asbestoscontaining materials. Concessionaire acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paints or leadbased paint hazards and asbestos or asbestos hazards prior to the execution of this Agreement. Concessionaire covenants and agrees (i) to be responsible for any remediation of lead-based paint or lead-based paint hazards and asbestos or asbestos hazards on the Premises as required by federal or state law as of the date of this Agreement in connection with the construction of any improvements to the Premises by Concessionaire; and (ii) that in its use and occupancy of the Premises, it will comply with all federal, state and local laws relating to lead-based paint and asbestos. Concessionaire further acknowledges and agrees that the City assumes no liability for damages for personal injury, illness, disability or death, to Concessionaire or to any other person, including members of the general public, to the extent caused by the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever, after the date on which Concessionaire took control of the Premises, with asbestos or lead-based paint on the Premises, whether Concessionaire has properly warned or failed properly to warn the individual(s) injured.
- 8.9.2 Use and Disposal of Hazardous Substances. Concessionaire shall not, without City's prior written consent, keep on or about the Premises any Hazardous Substances except customary office, kitchen, cleaning and other related supplies in normal quantities and handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Concessionaire shall promptly, timely and completely comply with all applicable governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers (if any) at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Concessionaire's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances used at the Premises. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Concessionaire's compliance with this Section 8.9.2, including City's attorneys' fees and costs, shall be Additional Charges and shall be

due and payable to City within ten (10) days after City's demand therefor, if Concessionaire's violation of this Section 8.9.2 is discovered as a result of such inspection or monitoring. Concessionaire shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Concessionaire's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises.

- 8.9.3 Hazardous Substances Indemnity. Concessionaire covenants and agrees to indemnify, defend and hold the City, its agents and employees, harmless from any and all of the damages, costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) from (i) any claims for personal injury to the extent caused by exposure, after the date on which the Concessionaire took control of the Premises, to lead-based paint or asbestos; and (ii) Concessionaire's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises during the Term. City shall indemnify, defend and hold Concessionaire harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed upon Concessionaire (including Concessionaire's attorneys' fees and costs) as a result of the use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises except for such Hazardous Substances released by Concessionaire. The indemnification and defense obligations of this section shall survive the expiration or earlier termination of this Agreement.
- 8.10 <u>Historic Properties</u>. The parties acknowledge that the Premises are deemed to be historic property as stated in the USA Deed and that any proposed changes to a historic structure require consultation with the State Historic Preservation Office and must be in compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Concessionaire agrees that any and all alterations to the Premises, including the Initial Alterations, will be undertaken in a manner that adequately ensures the preservation of the Premises consistent with the covenants stated in the USA Deed.

9. Utilities.

- 9.1 <u>General</u>. Concessionaire shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.
- 9.2 <u>Refuse Collection; Recycling of Waste Materials</u>. Concessionaire shall provide all necessary housekeeping and janitorial services for the Premises to a level consistent with other similar Parks facilities and operations and to the Superintendent's reasonable satisfaction. Concessionaire shall be responsible for proper storage and removal of trash, litter pickup and recycling consistent with City standards.
- 9.3 <u>Interruption</u>. Except as a result of the gross negligence or willful misconduct of City, City shall not be liable for any loss, injury or damage to person or

property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Concessionaire or to relieve Concessionaire from any of Concessionaire's obligations hereunder or to give Concessionaire a right of action against City for damages. City has no obligation to provide emergency or backup power to Concessionaire. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Concessionaire.

10. Licenses and Taxes.

- 10.1 Payment of Licenses and Taxes. Without any deduction or offset whatsoever, Concessionaire shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes applicable to Concessionaire's business activities conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises and owned by Concessionaire. Concessionaire shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Concessionaire's use and occupancy of the Premises.
- 10.2 <u>Contests</u>. Concessionaire shall have the right to contest the amount and validity of any taxes by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving Concessionaire of its covenant to pay any such taxes. City shall not be subjected to any liability or for the payment of any costs or expenses in connection with any such proceeding brought by Concessionaire, and Concessionaire hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation of this section shall survive the expiration or earlier termination of this Agreement.

11. Alterations by Concessionaire.

- alterations, additions or improvements in or to the Premises without first submitting to the Superintendent professionally-prepared and stamped plans and specifications and a construction schedule for such work and obtaining the Superintendent's prior written approval thereof. Notwithstanding the foregoing, Concessionaire may, following notice to the Superintendent but without the need for formal consent, make improvements to the Premises that, in the aggregate, do not exceed \$25,000 in any calendar year.
- 11.2 <u>Alteration Standards and Requirements</u>. Concessionaire covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Concessionaire's sole cost and expense by a licensed contractor approved by City and in a manner that (a) is built in accordance with the Superintendent -approved plans and

specifications and any conditions imposed by the Superintendent in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage and bonding, for City's benefit; (d) does not negatively affect the structural integrity of the Premises or any of the Premises' systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. In addition, Concessionaire shall meet with the City's Green Building Team and shall use good faith efforts to incorporate green building practices and sustainable design into its design for the Initial Alterations. Concessionaire shall secure all governmental permits and approvals required for the work; shall comply or cause its contractors to comply with all other applicable governmental requirements and restrictions, including RCW 39.12 pertaining to prevailing wages.

- 11.3 <u>Indemnification for Performance of Alterations</u>. Except as provided in Section 15 with regard to concurrent negligence, Concessionaire shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of or relating in any way to Concessionaire's performance of such alterations, additions and improvements, including, but not limited to those that arise from or out of Concessionaire's breach of its obligations under terms of this Section 11. This obligation shall survive the termination or expiration of this Agreement as to any claims accruing during the period of Concessionaire's occupancy of the Premises.
- 11.4 Ownership of Alterations. All alterations, additions and improvements for which the Concessionaire claimed and was granted a Capital Improvement Rental Offset, (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), shall become the property of City at the expiration or termination of this Agreement without any obligation on its part to pay for any of the same. At the Superintendent's request, Concessionaire shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Concessionaire shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Agreement if the Superintendent specifically so directs, in writing, at the time the Superintendent issues his or her approval thereof.
- 11.5 <u>As-built Drawings</u>. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Concessionaire shall deliver to the Superintendent a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Concessionaire, if typically produced for alterations and improvement of like character.

12. <u>Care of Premises</u>.

I2.1 <u>General Obligation</u>. Concessionaire shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Concessionaire or any of Concessionaire's officers, contractors, subtenants, agents, invitees, licensees or employees, normal wear and tear excluded.

- 12.2 <u>Minor and Major Maintenance Obligation</u>. Concessionaire shall be responsible for all minor and major maintenance of the Premises during the Term of this Agreement including but not limited to repairs of cracked or broken glass, regular exterior painting and masonry maintenance, roof repairs and replacement, and HVAC repair and replacement. The foregoing sentence does not extend to maintenance occasioned by an act or omission of City or its officers, agents, employees, or contractors, for which City shall be responsible. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of Rent arising by reason of City's making of repairs, alterations or improvements to the Premises. The City shall maintain the parking areas and Park common areas to the standard typical of other, similar park properties.
- 12.3 <u>Joint Annual Inspection of Premises; Remedial Action Obligation</u>. The Concessionaire shall participate in an annual inspection of the Premises with the City and shall take any and all action that is consistent with the terms of this Agreement that the City may specify as necessary to maintain and operate the Premises in a clean and safe manner.
- 12.4 <u>City Remedy upon Concessionaire's Failure to Maintain Premises</u>. If Concessionaire fails to maintain the Premises in good order, condition, and repair, the City shall give Concessionaire notice to undertake such work as is reasonably required to so maintain the Premises. If Concessionaire fails to commence such work within thirty (30) calendar days after the effective date of the City's notice and to diligently prosecute it to completion, then the City shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Concessionaire for the costs reasonably incurred by the City in connection therewith and Concessionaire shall promptly pay the same as Additional Charges. The City shall have no liability to Concessionaire for any damage, inconvenience, or interference with Concessionaire's use of the Premises as a result of the City's performing any such work, except to the extent it is the City's, or its agents' or contractors' gross negligence or intentional misconduct.
- 12.5 <u>Custodial Service for Premises</u>. Concessionaire shall, at its own expense, at all times, keep the Premises, the entrance to the Premises and areas within ten (10) feet of the exterior Premises' walls in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving the Premises clean and presentable. Concessionaire shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Agreement and all necessary janitorial service to adequately maintain the inside of such areas using a company reasonably approved by City. To the maximum extent practicable, Concessionaire shall comply with any recycling program that the City establishes for the Premises and/or Park.

If, after City provides written notice to Concessionaire of Concessionaire's failure to comply with this Section, Concessionaire fails to take good care of such areas, City, at its option, may do so, and in such event, upon receipt of written statements from City, Concessionaire shall promptly pay the entire actual and reasonable cost thereof as an

Additional Charge. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view.

Concessionaire, at its expense, shall undertake all repairs necessary to maintain the Premises (including the structural aspects and exterior of the Premises), and the heating, ventilation, utility, electric, plumbing and other systems and equipment serving the Premises in a reasonably good operating condition, as determined by the Superintendent.

- 12.6 <u>Prohibition against Installation or Integration of Any Work of Visual Art on Premises without City's Consent.</u> City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Concessionaire shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without City's prior, express, written consent. City's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in City's discretion.
- Artists Rights Act of 1990. Concessionaire shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Section 12.6 of this Agreement; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Concessionaire or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification and defense obligation of this section shall survive the expiration or earlier termination of this Agreement.

13. Signs and Advertising.

13.1 <u>Signs, Generally.</u> Except for those signs authorized by the Superintendent in connection with the approval of Concessionaire's signage plan described in Section 7.6 and temporary signs permitted under Section 13.2, Concessionaire shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever placed or installed the exterior of the Premises, without the Superintendent's prior written consent, which consent may be granted, withheld or conditioned in the Superintendent's reasonable discretion. Concessionaire shall remove all signage at the expiration or earlier termination of this Agreement and repair any damage or injury to the Premises caused by such removal.

- 13.2 <u>Temporary Signs</u>. Temporary signs or banners not more than 24 square feet in size may be displayed on or about the Premises to advertise a special event beginning two weeks immediately before the event advertised, through the conclusion of such event.
- 13.3 <u>Recognition</u>. In accordance with the approved exterior signing plan, Concessionaire shall install one sign on or about the exterior of the Premises with the Seattle Parks Department logo and a statement recognizing Seattle Parks and Recreation's ownership of the building and memorializing the history of the building as part of the Sand Point Naval Air Station. Concessionaire shall also ensure that it does nothing to interfere or conflict with the City's obligation to provide signage as described in provision 2 of the USA Deed.
- 14. <u>Surrender of Premises</u>. At the expiration or sooner termination of the Agreement Term, Concessionaire shall return the Premises to City in the same condition in which received on the Possession Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 11), excluding normal wear and tear. Prior to such return, Concessionaire shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Concessionaire remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; window or wall coverings; or other elements for which a Capital Improvement Rental Offset was granted, unless otherwise specifically directed by City in writing at the time when City approves their installation. Concessionaire's obligations under this Section 14 shall survive the expiration or termination of this Agreement.

15. Waiver; Indemnification.

Concessionaire's Indemnification. Except as otherwise provided in this section, Concessionaire shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors, harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Concessionaire's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Concessionaire's breach of its obligations hereunder, or (iii) any act or omission of Concessionaire or any subtenant, licensee, assignee or lessee of Concessionaire, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Concessionaire agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification and defense obligation of this section shall survive termination or expiration of this Agreement. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Concessionaire's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Concessionaire and its employees, to the extent of their negligence. Concessionaire shall promptly notify City of casualties or accidents occurring in or about the Premises.

- 15.2 <u>Concessionaire's Release of Claims</u>. Concessionaire hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by Concessionaire or any person claiming through Concessionaire resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of equipment; any failure to make repairs; any defect, failure, surge in, or interruption of building facilities or services; broken glass; water leakage; the collapse of any building component.
- 4.24.115 as in effect on the Effective Date of this Agreement, all provisions of this Agreement pursuant to which City or Concessionaire (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence.
- 15.4 <u>City's Indemnification</u>. Except as otherwise provided in this section, City shall indemnify, defend and save Concessionaire harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) City's occupation, use or improvement of the Park, or (ii) City's breach of its obligations hereunder. City agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification and defense obligation of this section shall survive termination or expiration of this Agreement. The foregoing indemnity is specifically and expressly intended to constitute a waiver of City's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Concessionaire with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence.
- 15.5 <u>City's Release of Claims</u>. City hereby fully and completely waives and releases all claims against Concessionaire to the extent a loss or damage is caused by City's negligence, willful misconduct or breach of this Agreement.

CITY AND CONCESSIONAIRE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 15.

16. Insurance.

16.1 <u>Minimum Insurance to be Secured and Maintained</u>. Prior to the Commencement Date, Concessionaire shall secure and shall thereafter maintain in full force and effect, at no expense to City, and throughout the entire Agreement Term, insurance as specified below:

16.1.1 Commercial General Liability Insurance including:

Premises/Operations Liability
Products/Completed Operations Liability
Personal/Advertising Liability
Contractual Liability
Stop Gap/Employers Contingent Liability
Independent Contractors Liability
Liquor Liability/Host Liquor Liability
Fire Damage Legal Liability

Such policy(ies) must be endorsed as provided in Section 16.3.1.2 hereof and provide the following minimum limits:

\$2,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

\$2,000,000 each Occurrence Personal and Advertising Injury

\$ 100,000 each Occurrence Fire Legal Liability

\$1,000,000 each Accident/ Disease - Each Employee Stop Gap

- 16.1.2 Business Automobile Liability including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of \$2,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage.
- 16.1.3 Workers' Compensation securing Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington; <u>provided</u>, that if Concessionaire is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Concessionaire shall certify that qualification by a letter that is signed by a corporate officer of Concessionaire and delivered to City that sets forth the limits of any policy of excess insurance covering its employees.
- 16.1.4 **Property Insurance** under which the Concessionaire's furniture, fixtures, equipment and inventory and all alterations, additions and improvements that

Concessionaire makes to the Premises are insured throughout the Agreement Term in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form" (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of Concessionaire's business. City shall be named as a loss payee as respects property insurance covering alterations, additions and improvements under such policy.

16.2 General Requirements Regarding Concessionaire's Insurance.

- 16.2.1 The insurance required by Sections 16.1.1 and 16.1.2 shall be endorsed to include the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds. The insurance required by Sections 16.1.1 and 16.1.2 shall be primary as respects City; shall provide that any other insurance maintained by City shall be excess and not contributing insurance with Concessionaire's insurance; and shall provide that such coverage shall not be reduced or canceled without forty-five (45) days prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in Section 1.7 hereof.
- 16.2.2 All insurance policies required hereunder shall be subject to reasonable approval by City's Risk Manager as to company, form and coverage. All policies shall be issued by a company rated A—:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington surplus lines broker.
- 16.2.3 Any deductible or self-insured retention in excess of \$10,000 must be disclosed to, and shall be subject to reasonable approval by, City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of Concessionaire.
- 16.2.4 Coverage and/or limits may be reasonably altered or increased as necessary to reflect type of or exposure to risk. City shall have the right to periodically review the appropriateness of such coverage and limits in view of inflation and/or changing industry conditions and to require an increase in such coverage or limits upon ninety (90) days prior written notice.
- 16.3 Evidence of Insurance. The following documents must be delivered to City at its address as specified in or pursuant to Section 1.7 hereof, as evidence of the insurance coverage secured and maintained by Concessionaire:

- 16.3.1 On or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy;
- 16.3.1.1 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;
- 16.3.1.2 A copy of the endorsement naming the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;
- 16.3.1.3 A copy of an endorsement stating that the coverages provided by such policy to City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in or provided pursuant to Section 1.7 hereof; and
- 16.3.1.4 For the Commercial General liability and Business Automobile insurance to be secured and maintained pursuant to Section 16.1.1 and 16.1.2 hereof, a copy of the "Separation of Insureds" or "Severability of Interests" clause in such policy.
- 16.3.2 Pending receipt of the documentation specified in this Section 16, Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.
- 16.4 <u>Waiver of Subrogation</u>. City and City's insurer(s) shall waive subrogation for damage to or destruction of the Premises and City's furniture, fixtures, equipment and inventory in favor of Concessionaire except with respect to losses of City's aforesaid property of up to \$100,000 that are attributable to Concessionaire's negligence and to which Concessionaire's Fire Legal Liability insurance responds; however, in the event of a loss to City's aforesaid property attributable to Concessionaire's negligence, Concessionaire agrees to reimburse City for the amount of its property insurance deductible up to \$100,000.00. Concessionaire and Concessionaire's insurer(s) shall waive subrogation for damage to or destruction of Concessionaire's alterations, additions and improvements, furniture, fixtures, equipment and inventory in favor of City; however, in the event of a loss to Concessionaire's aforesaid property attributable to City's negligence, City agrees to reimburse Concessionaire for the amount of its property insurance deductible up to \$100,000.

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- 16.5 <u>Assumption of Risk</u>. The placement and storage of its personal property in the Premises shall be the responsibility, and at the sole risk, of Concessionaire.
- 17. Assignment or Sublease. Concessionaire shall not sublet or encumber the whole or any part of the Premises, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of both the Superintendent and the National Park Service, whose consent shall be given or withheld in his, her, or its sole discretion. An assignment of this Agreement to a lender for security purposes shall constitute an assignment requiring the prior written consent of both the Superintendent and the National Park Service. If Concessionaire is a corporation, then any transfer of this Agreement by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Concessionaire's outstanding voting stock, shall constitute an assignment requiring the prior written consent of both the Superintendent and the National Park Service. If Concessionaire is a partnership, then a change in general partners in or voting or decision -making control of the partnership shall also constitute an assignment requiring the prior written consent of both the Superintendent and the National Park Service. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease without the Superintendent's or the National Park Service's prior written consent, at the Superintendent's or the National Park Service's option, shall be void. No assignment or sublease shall release Concessionaire from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to the Superintendent and the National Park Service.
- 18. Assignment by City. If City sells or otherwise transfers the Premises, or if City assigns its interest in this Agreement, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's obligations under this Agreement arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Agreement arising thereafter, but this Agreement shall otherwise remain in full force and effect. Concessionaire shall attorn to City's successor, which assumes and agrees to perform all of City's obligations under this Agreement.
- 19. <u>Destruction</u>. If the Premises are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) Concessionaire shall repair the Premises with due diligence; otherwise City may elect to terminate this Agreement by giving written notice of termination to Concessionaire within thirty (30) days after the occurrence. If the Premises are repaired, Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or Concessionaire may terminate this Agreement upon sixty (60) days written notice to the other. If thirty percent (30%) or more of the Premises are destroyed

or damaged, Concessionaire may elect to terminate this Agreement upon sixty (60) days written notice to City. If this Agreement is terminated due to casualty, the City shall be entitled to all insurance proceeds payable on account of the loss to the Premises. In the event of damage by casualty and the Agreement is not terminated, Concessionaire shall, at its sole cost and expense, promptly repair all damage to its own personal property.

20. Eminent Domain.

- Taking. If all of the Premises are taken by Eminent Domain, this Agreement shall terminate as of the date Concessionaire is required to vacate the Premises and all Rent and Additional Charges shall be paid to that date. Exercise by the United States of America of its right to revert the property under the terms and conditions of the USA Deed shall not be construed as an exercise of Eminent Domain by the United States of America. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for Concessionaire's business, in the reasonable judgment of Concessionaire, Concessionaire may terminate this Agreement by written notice given to the City not more than thirty (30) days after City gives Concessionaire written notice of the taking, and such termination shall be effective as of the date when Concessionaire is required to vacate the portion of the Premises so taken. If this Agreement is so terminated, all Rent and Additional Charges shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Agreement is not terminated, the City, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and Concessionaire, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking, to the extent award is available therefor. Base Rent and Additional Charges payable hereunder shall be reduced from the date Concessionaire is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.
- 20.2 Award. Except as otherwise provided below, City reserves all right to the entire damage award or payment for any taking by Eminent Domain, and Concessionaire waives all claim whatsoever against City for damages for termination of any interest it may have, if any, in the Premises or for interference with its business. Concessionaire hereby grants and assigns to City any right Concessionaire may now have or hereafter acquire to such damages and agrees to execute and deliver such further instruments of assignment as City, from time to time, may request. Concessionaire, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by Concessionaire on account of any loss incurred by Concessionaire in moving Concessionaire's merchandise, furniture, trade fixtures and equipment and the cost of restoring its personal property and improvements made by it to the Premises.

21. Default by Concessionaire.

- 21.1 <u>Definition</u>. If Concessionaire violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Agreement; or if Concessionaire files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Concessionaire's assets or if Concessionaire makes an assignment for the benefit of creditors, or if Concessionaire is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Concessionaire shall be deemed in default ("Default").
- 21.2 <u>City Remedies</u>. If Concessionaire has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within thirty (30) days after written notice thereof has been provided to Concessionaire, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on Concessionaire's behalf and at Concessionaire's sole expense and to charge Concessionaire for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (ii) to terminate this Agreement; provided, however, that if the nature of Concessionaire's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Concessionaire shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.
- Agreement, City may reenter the Premises, take possession thereof, and remove all persons therefrom, for which actions Concessionaire shall have no claim thereon or hereunder. Concessionaire shall be liable and shall reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Concessionaire. City shall have the right to sell such stored property, after reasonable prior notice to Concessionaire or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied, first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Concessionaire to City; the balance, if any, shall be paid to Concessionaire.
- 21.4 <u>Vacation or Abandonment</u>. If Concessionaire vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Concessionaire's notice address set forth in Section 1.7, above, demanding such re-occupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Concessionaire to City in writing, Concessionaire shall be in default under this Agreement.

- City's Non-exclusive Remedies upon Termination due to Default of 21.5 Concessionaire. Notwithstanding any reentry by City and anything to the contrary in this Agreement, in the event of the termination of this Agreement due to the Default of Concessionaire, the liability of Concessionaire for all sums due under this Agreement provided herein shall not be extinguished for the balance of the Term of this Agreement. Concessionaire shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Concessionaire's failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Section 21.5 shall survive the expiration or earlier termination of this Agreement.
- 22. <u>City's Remedies Cumulative; Waiver</u>. City's rights and remedies hereunder are not exclusive, but cumulative, and City's exercise of any right or remedy due to a default or breach by Concessionaire shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that City may have under this Agreement or by law or in equity. Neither the acceptance of rent nor any other act or omission of City at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Agreement shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive City of its right to cancel or forfeit this Agreement, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Agreement.
- 23. <u>Default by City</u>. City shall be in default if City fails to perform its obligations under this Agreement within thirty (30) days after its receipt of notice of nonperformance from Concessionaire; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion. Upon City's default, Concessionaire may pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington.
- 24. <u>Attorneys' Fees</u>. If either party retains the services of an attorney in connection with enforcing the terms of this Agreement, each party agrees to bear its own attorneys' fees and costs.
- 25. Access by City and National Park Service. The City and its agents shall have the right to enter the Premises at any reasonable time to examine the same, and to show them to prospective purchasers, lenders or tenants, and to make such repairs, alterations, improvements, additions or improvements to the Premises as the City may deem necessary or desirable. In addition, the National Park Service shall have the right to enter

the Premises at any reasonable time to examine the same. If Concessionaire is not personally present to permit entry and an entry is necessary in an emergency, the City may enter the same by master key or may forcibly enter the same, without rendering the City liable therefor, except in the event of the City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon the City any duty of repair or other obligation not specifically stated in this Agreement. Concessionaire shall change the locks to the Premises only through the City and upon paying the City for all actual and reasonable costs related thereto.

- 26. <u>Holding Over</u>. Unless otherwise agreed in writing by the parties hereto, any holding over by Concessionaire after the expiration of the Agreement Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein. Either party may terminate any holdover tenancy by written notice delivered to the other party not later than twenty (20) days prior to the end of the final month. If Concessionaire fails to surrender the Premises upon the expiration or termination of this Agreement without City's written consent, Concessionaire shall indemnify, defend and hold harmless City from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure. Concessionaire's obligations under this section shall survive expiration or termination of this Agreement.
- 27. Notices. Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Section 1.7 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.
- 28. <u>Successors or Assigns</u>. All of the terms, conditions, covenants and agreements of this Agreement shall extend to and be binding upon City, Concessionaire and, subject to the terms of Sections 17 and 18, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.
- 29. <u>Authority and Liability</u>. Concessionaire warrants that this Agreement has been duly authorized, executed and delivered by Concessionaire, and that Concessionaire has

the requisite power and authority to enter into this Agreement and perform its obligations hereunder. Concessionaire covenants to provide City with evidence of its authority and the authorization of this Agreement upon request.

- 30. <u>Partial Invalidity</u>. If any court determines that any provision of this Agreement or the application hereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, or application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 31. Force Majeure. Neither City nor Concessionaire shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war; provided, however, that the foregoing shall not excuse Concessionaire from the timely payment of Rent and Additional Charges due hereunder, when due.
- 32. <u>Counterparts</u>. The parties may execute this Agreement in counterparts, which, taken together, constitute the entire Agreement.
- 33. <u>Headings</u>. The section headings used in this Agreement are used for purposes of convenience and do not alter in any manner the content of the sections.
- 34. <u>Context</u>. Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular. The use of the term National Park Service shall be deemed to include any delegated representative of the United States of America and/or the Department of the Interior under the USA Deed.
- 35. Execution by City and Concessionaire: Effective Date. Neither City nor Concessionaire shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Agreement with particulars inserted. No contractual or other rights shall exist or be created between City and Concessionaire until all parties hereto have executed this Agreement and the appropriate legislative authority approves it. This Agreement shall become effective on the date (the "Effective Date") on which this Agreement is executed by City and Concessionaire and approved by the Seattle City Council. City shall have no liability to Concessionaire and shall have the right to terminate this Agreement upon written notice to Concessionaire if this Agreement is legislatively disapproved.
- 36. <u>Time of Essence: Time Calculation Method</u>. Time is of the essence with respect to this Agreement. Except as otherwise specifically provided, any reference in this Agreement to the word "day" means a "calendar day"; provided, however, that if the

final day for any action required hereunder is a Saturday, Sunday or City holiday, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or City holiday. Any reference in this Agreement to the word "month" means "calendar month."

- 37. Standards. Concessionaire recognizes that, although it is operating its facilities as an independent operator, Seattle Parks and Recreation is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. Concessionaire, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility.
- 38. <u>City's Control of Premises and Vicinity</u>. All common and other facilities provided by City are subject to the City's exclusive control and management by City. Accordingly, City may do any and all of the following (among other activities in support of Parks or other municipal objectives), all without incurring any liability whatsoever to Concessionaire:
- 38.1 <u>Change of Vicinity</u>. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, exhibit, service area, and parking areas in the vicinity of the Premises;
- 38.2 <u>Traffic Regulation</u>. City may regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of Concessionaire and its invitees, employees, and patrons.
- 38.3 <u>Display of Promotional Materials</u>. City may erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to and nearby the Premises.
- 38.4 <u>Promulgation of Rules</u>. City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any Department property including, but not limited to, the Premises.
- 38.5 <u>Change of Businesses</u>. Subject to the restriction on operation of health club facilities within Magnuson Park provided herein, City may change the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises.
- 39. <u>Concessionaire's Records and Reports</u>. Concessionaire shall keep true, full, and accurate books of account setting forth Concessionaire's receipts, together with any other information that will affect the determination of Rent and Additional Charges. Together with each monthly Percentage Rent payment due hereunder, Concessionaire shall deliver to the City an accurate, itemized report of all revenues earned during the month for which payment is being made.

Along with each Management and Operations Plan, as described in Section 8.2, Concessionaire shall deliver to the City a written report, itemized by revenue source, identifying the aggregate amount of gross receipts generated from Commercial Events on the Premises during the immediately preceding yea.

City shall be allowed after five (5) days prior written notice to Concessionaire to inspect Concessionaire's books of account at Concessionaire's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Concessionaire's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, or if the audit shall show that the reports submitted by Concessionaire understated Concessionaire's receipts by more than three percent (3%) thereof for any year covered by the audit, the costs and fees for such audit shall be paid by Concessionaire to City. Concessionaire shall retain all books of accounting and any other information that will affect the determination of Rent and Additional Charges for a period of six (6) years after the last day of the period that such particular record covers, and Concessionaire shall make them available for inspection at Concessionaire's office within ten (10) days of City's prior written demand therefor. For example, Concessionaire shall maintain its 2007 financial records through December 31, 2013. Concessionaire's obligations under this section shall survive expiration or termination of this Agreement.

Concessionaire shall supply City any documentation that may be required by the City to file required compliance reports to the Federal Lands to Parks Program, National Park Service.

40. <u>City's Consent or Approval</u>. Whenever the consent of the City or the Superintendent to any act to be performed by Concessionaire is required under this Agreement (a) Concessionaire must obtain the consent or approval in writing expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval may be withheld in the City's sole discretion.

No permission, consent, or approval of the City or the Superintendent contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

41. Miscellaneous.

41.1 <u>Entire Agreement: Applicable Law.</u> This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of City and Concessionaire concerning the Premises, and there are no other agreements or understanding, oral or written, between City and Concessionaire concerning the Premises. Any subsequent modification or amendment of this Agreement shall be binding upon

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City and Concessionaire only if reduced to writing, signed by them, and concurred with in writing by the National Park Service. This Agreement shall be governed by, and construed in accordance with the laws of the State of Washington.

41.2 <u>Negotiated Agreement</u>. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below.

CITY:	CONCESSIONAIRE:
THE CITY OF SEATTLE	ARENA SPORTS MAGNUSON LLC
By: Day	ву:
Print Name/Title: Time Gallagha Sy	Don Crowe CEO
Department of Parks and Recreation	Arena Sports Magnuson LLC
S NOTARY &	



Exhibit A HISTORIC PRESERVATION COVENANT

The property conveyed herein is within the Naval Station Puget Sound (NSPS) Sand Point Historic District. A location map depicting the parcel in relation to the Historic District and a list of buildings and other site features that are considered contributing elements to the Historic District are described on Attachment 1 to this Exhibit. All structures and site features identified as contributing elements to the NSPS Sand Point Historic District have been determined by the Washington State Historic Preservation Office (SEPO) to be eligible for inclusion in the National Register of Historic Places and shall therefore be preserved, protected, and maintained in accordance with plans approved by the National Park Service (NPS) and prior agreements between the Department of Navy and the State of Washington Historic Preservation Officer (SHPO), herein incorporated by reference.

- Prior to the initiation of any construction, alteration, remodeling, demolition, disturbance of the ground surface, irrevocable disturbance of landscape settings, or other action which would materially affect the integrity, appearance, or historic value of structures or settings, the grantee or successors and assigns shall obtain the approval of the National Park Service and/or a designee (SHPO). Actions considered to materially affect the property would affect the exterior surfaces, or change the height, or alter the exterior facade (including without limitation exterior walts, windows and roofs, design, color and materials) or adversely effect the structural soundness of the property or alter a significant interior feature. Actions that would affect wisw within the historic district, landscaping, open space, add new structures or paved areas or site elements such as towers, feaces, signs would also be considered to materially affect the property. Plots which are submitted in accordance with this section shall be prepared to conform, to the maximum extent possible, with the Secretary of Interior's "Standards and Guidelines for Historic Preservation Projects" as supplemented or amended.
- Projects identified within and in full conformance with a Historic Property Reuse and Protection Plan, approved by the National Park Service and for a designet shall be considered to be pre-approved and are not subject to the requirements of item 1 of this section.
- 3. Grantee will make every effort to retain and reuse, to the extent practicable, the historic structures.
- 4. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the United States Government may, following reasonable notice to the Grantee, institute any action to enjoin said violation or to recover the restoration of the property. The successful party shall be entitled to recover all costs or expenses incurred in connection with such action, including all court costs and attorney's fees.
- 5. The failure of the United States Government to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.
- 6. This historic preservation covenant is a binding servitude on the grantee and its successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the grantee verbation or by explicit reference in any deed or other legal instrument by which it divests itself of either fee simple or any lessor estate of all or any part of the real estate that is associated with the NSPS Sand Point Historic District.

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Scatle, Washington Page 10 of 11

ATTACHMENT 1 to Exhibit A SAND POINT HISTORIC DISTRICT CONTRIBUTING ELEMENTS AND THEIR CHARACTER DEFINING FEATURES CONTAINED WITHIN THE NATIONAL PARK SERVICE'S PUBLIC BENEFIT CONVEYANCE TO THE CITY OF SEATTLE

The following features of the various historic district elements were determined to be character defining by the representatives of the Washington State Office of Archeology and Historic Preservation, the Navy and the City of Seattle during site inspections conducted in September, 1996, March, June, July, and August of 1997.

BUILDINGS

In general the character defining exterior features of contributing buildings are wall surfaces, rooflines, window openings and divided light windows, specialized doors, art deco architectural ornamentation and lighting fixtures. Most of the buildings retain their original style. There have been additions to many of the buildings but most were completed prior to W.W. If and used similar materials in the same style to mimic the original structure. Original windows and doors have been replaced in several instances with non-original material but the placement and style have been retained. There is sufficient integrity in the floor plans, space volumes, exposed structural elements, and industrial finishes in the hangars and other shop spaces to make these interior features contributing elements. In the case of the other types of buildings most have been substantially modified during numerous renovations and use changes and exhibit a limited amount of details or fabric worthy of retention.

It is important to note that the building specific character defining features listed below are intended to provide a baseline reference point for consideration during development of alteration and maintenance projects. Preservation of the listed features should be the goal during project planning. In addition it should not be assumed that projects, especially large scale interior remodel projects, will not have an adverse effect on historic character even if none of the listed features is affected. Such projects will still require review by a historic preservation specialist.

Building Specific Features

Building 27 (Parcel 2, - constructed 1937) Steel Frame building constructed to be an aircraft hangar containing a little over 100,000 s.f.. It is 50 feet high and contains one large hangar bay and office and storage on the northwest and southeast corner for the full four-story height. The building cladding is corrugated transite panels. This building relates directly to the historic aviation mission.

Building 27 Exterior Features

- Original multi-story rolling (hand cranked) metal framed hangar doors on the east and west sides of the hangar bays. These doors have large four light windows in the center starting at the second story level to the top.
- 2. Original steel framed divided light widows on the north and south walls.

Building 27 Interior Features

- 1. Interior space volume in hangar bays.
- 2. Original Laminated wood ceiling.

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington

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of the tenements, hereditaments, and appurtenances thereunto belonging. With regard thereto, the Grantee shall execute a deed, as directed by the Grantor, conveying all interest in the premises and improvements thereon to the Grantor. The failure of the grantor to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment or such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

15. The Grantee, by its acceptance of this deed, covenants and agrees that in the event the Grantor exercises its option to revert all right, title, and interest in the property to the Grantor, or the Grantee voluntarily returns title to the property in lieu of a reverter, then the Grantee shall provide protection to and maintenance of said property at all times until such time as the title is actually reverted or returned to and accepted by the Grantor, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in its regulations FPMR 101-47.402 in effect as of the date of this deed.

UNITED STATES OF AMERICA

Acting by and through the Secretary of the Interior

LLSO.O.

Arthur A Eco Deputy Regional Director, Pacific West Region

National Park Service

STATE OF CALIFORNIA)

) s

COUNTY OF ALAMEDA)

On this 12 day of Nex 2002, before me, the subscriber, personally appeared Arthur E. Eck to be known and personally known to me to be the Deputy Regional Director, Pacific West Region, National Park Service, of the United States of America, acting by and through the Secretary of the Interior, a governmental agency of the United States of America, and known to me to be the same person described in and who executed the foregoing instrument as such Deputy Regional Director, Pacific West Region aforesaid, as the act and deed of the United States, for and on behalf of the Secretary of the Interior, and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

M. DOLORES GUILLORY
Commission # 1289215
Notory Public - Costioning
Son Francisco County
My Comm. Bipher. Am 20, 2015

Witness my hand and official seal.

Page 8 of 11

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington

The foregoing conveyance is hereby accepted and the undersigned agrees, by this acceptance, to assume and be bound by all the obligations, conditions, covenants, and agreements therein contained.

STATE OF WASHINGTON)

COUNTY OF KING

Witness my hand and official seal.

NOTARY PUBLIC

NOTARY PUBLIC OF WASH

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington

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- 9. The Grantee acknowledges that it has received the EBS and the FOST and its attachments. The Grantee acknowledges that it has had the opportunity to inspect the physical condition and current level of environmental hazards on the property and to determine the suitability of the property as to safety for the Grantee's intended use, human health, and the environment in general.
- 10. The Grantee agrees to indemnify, defend, save, and hold harmless the Grantor, and Grantor employees, officers, representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, law suits, claims, demands, causes of action, damages, losses, costs, and expenses (including, without limitation, costs associated with any investigation, monitoring, sampling, testing, or removal of hazardous substance(s), attorney fees and expenses, and court costs) to the extent caused by the release of any hazardous substance(s) brought onto the herein described property after the date of this deed and while the property was in the possession and/or control of the Grantee. However, nothing in this Section 10 shall be construed to limit in any way the United States' obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that any additional remedial action, response or corrective action found to be necessary to protect human health and the environment with respect to any hazardous substances stored, disposed or, or released on the property prior to the date of transfer shall be conducted by the United States.

Lead Based Paints and Asbestos Covenants

City of Seattle, Washington

- 11. The Grantee is hereby informed and does acknowledge that Building 27 located on the property is presumed to contain lead-based paints. The presence of lead-based paints within this structure may affect their use for residential purposes in compliance with 24 CFR Part 35, Subpart H. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paints or lead-based paint hazards prior to the execution of this conveyance. The Grantee covenants that, if required by applicable federal or state law and in compliance with such law, Grantee will provide for an inspection, abatement, and/or elimination of any lead-based paint hazard on a portion of the applicable property (as defined and limited by this Section 11) prior to the occupancy or use of said portion of the property by successors or assigns. The Grantee covenants and agrees to be responsible for any remediation of lead-based paint or lead-based paint hazards on the applicable property (as defined and limited by this Section 11) found to be necessary and required by federal or state law after the date of conveyance. The Grantee covenants and agrees to indemnify and hold harmless the Grantor, its agents and employees against any claims for personal injury to the extent caused by exposure, after the date on which the City took control of the relevant portion of the property, to lead-based paint on the applicable property (as defined and limited by this Section 11). Should, in the future, lead-based paint present in, on, or under the property prior to the date of transfer be considered a CERCLA release, nothing in this Section 11 shall be construed to limit in any way the United States' obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that any additional remedial action, response or corrective action found to be necessary to protect human health and the environment with respect to any hazardous substances stored, disposed or, or released on the property prior to the date of transfer shall be conducted by the United States.
- 12. The Grantee is hereby informed and does acknowledge Grantor's representation that asbestos and asbestos containing materials have been found on the property as described in the FOST, EBS, and

assestos containing materials have been found on the property as described in the P

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance

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there attachments. The scope of this Section 12, and the meaning of "applicable property," is specifically limited to only the building interiors of those portions of the property on which the EBS, or the FOST or its attachments, identified that asbestos or asbestos containing material was present. The Grantee covenants and agrees that in its use and occupancy of the applicable property (as defined and limited by this Section 12), it will comply with all Federal, State and local laws relating to asbestos; and that Grantor assumes no liability for damages for personal injury, illness, disability or death, to the Grantee or to any other person, including members of the general public, to the extent caused by the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever, after the date on which the City took control of the relevant portion of the property, with asbestos on the applicable property (as defined and limited by this Section 12), whether Grantee has properly warned or failed properly to warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary and required by federal or state law on the applicable property (as defined and limited by this Section 12). Should, in the future, asbestos present in, on, or under the property prior to the date of transfer be considered a CERCLA release, nothing in this Section 12 shall be construed to limit in any way the United States' obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that any additional remedial action, response or corrective action found to be necessary to protect human health and the environment with respect to any hazardous substances stored, disposed or, or released on the property prior to the date of transfer shall be conducted by the United States.

Historic Resource Covenant

13. The property conveyed herein is contained within Sand Point Historic District. The Grantee hereby covenants on behalf of itself, heirs, successors, and assigns at all times to the United States to maintain property described within this Section in accordance with the Historic Preservation Covenant, attached hereto as Exhibit A. Incorporation of this Historic Preservation Covenant is made pursuant to the October 1997 Programmatic Agreement among the Department of the Navy, The Advisory Council on Historic Preservation, and The Washington State Historic Preservation Officer Regarding: Base Closure and Disposal of the Naval Station Puget Sound, Sand Point, a copy of which can be located at the Office of Sand Point Operations, 7400 Sand Point Way NE, Seattle, WA 98115.

Reversion and Default .

14. The failure of the Grantee, or of its successors and assigns, to comply with any of the conditions and covenants contained in this deed shall constitute a default if such default shall continue, after written notice from the Grantor specifically identifying the nature of the default, for a period of not less than ninety (90) days, or such longer period as may be reasonably required to cure the default, provided the Grantee commences the cure within said ninety (90) days after the Grantor's written notice of default and covenants to diligently complete the cure within such reasonable period. In the event the Grantee is in default of any covenant or condition contained in this deed then upon failure to eliminate, rectify, cure, or commence action to cure said breach within the time agreed upon, all right, title, and interest in and to said premises shall, at the Grantor's option revert to and become the property of the Grantor. In addition to all other remedies for such breach relating to the use of the property for park and recreation purposes, the preservation of identified historic resources, or related to nondiscrimination, the Grantee, its successors and assigns, at the Grantor's option, shall forfeit all right, title, and interest in any and all

Parcei 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington Page 7 of 11

parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior. The Grantee, it's successor or assign shall provide written notice to the State of Washington Department of Ecology or successor agency of any intent to convey any interest in portions of the property identified in Section 8.

- 4. From the date of this conveyance, the Grantee shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.
- 5. The Grantee further agrees to comply with the requirements of Public Law 90-480 (82 Stat. 718) the Architectural Barriers Act of 1968 as amended by Public Law 91-205 of 1970 (84 Stat. 49) to assure that facilities developed on this property are accessible to the physically handicapped; and, further assure in accordance with Public Law 93-112, the Rehabilitation Act of 1973 (87 Stat. 394) that no otherwise qualified handicapped individual shall solely by reasons of his handicap be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity in effect on this property; and agrees to comply with the provisions of Title III of the Age Discrimination Act of 1975, as amended (Public Law 94-135; 45 C.F.R. Part 90) prohibiting discrimination on the basis of age in programs and activities conducted on this property.
- 6. As part of the consideration for this Deed, the Grantee covenants and agrees that: (1) the program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this Deed (43 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; (5) the Grantee will insure that each other person (any legal entity) who, through contractual or other arrangements with the Grantee is authorized to provide services or benefits under said program complies with the same obligations as those imposed upon the Grantee by this covenant (6) this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee; and (7) the Grantor expressly reserves a right of access to, and entrance upon, the above described property in order to determine compliance with the terms of this conveyance.
- 7. As to the obligations in Section 1 through 6, the Grantee shall hold harmless, defend and indemnify the United States, its employees, agents, and representatives from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that arises from the Grantee's or the Grantee's agent's use or occupancy of the property and/or the Grantee's default of the terms of this deed. Nothing in this Section 7 shall be construed in any way to limited the United States obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that any additional remedial action, response action or corrective action found to be necessary to protect human health and the environment with respect to any hazardous

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington

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substances stored, disposed of, or released on the property prior to the date of transfer shall be conducted by the United States.

Hazardous Materials Covenants

- 8. Portions of the conveyed property have been determined to contain hazardous substances that exceed standards established under the State of Washington Model Toxics Control Act (MTCA). The following restrictive covenants are imposed on the identified portions of the conveyed property. As between Grantee, its successors and assigns, and the United States, a release requiring remediation, including testing and investigations, resulting from the violation of a restriction required by this section by the Grantee or any of its successors or assigns is the responsibility of such Grantee, successor or assign.
 - 8.1. Submerged portions of the property within Pontiac Bay contain contaminated sediments adjacent to the quay wall along the property's waterfront. Activities shall be limited, to the extent practicable, to those activities that do not disturb these sediments. Activities, which cause continued disruption of these sediments, such as continued use of motor driven boats in shallow areas, are prohibited. In addition, new land uses are prohibited that involve continual resuspension or disturbance of sediments, such as public swimming, or windsurfing.
 - 8.2. The use of the tarmac area surrounding Building 27 is restricted to uses which do not penetrate the tarmac. Pipelines which carry AVGAS throughout this area were cleaned and closed. Petroleum contamination exceeding MTCA levels was detected east of Building 11, a 62,000 s.f. public works office and shop building located on Parcel 1, Lot A. Because the contamination is located beneath the tarmac, constructed with 18-24" of reinforced concrete, and there is no exposure pathway, soils were not remediated. There is no immediate risk to human health and the environment so long as the tarmac is not penetrated or removed thereby exposing the underlying soil and fill.
 - 8.3. Prior to willingly conducting a use inconsistent with a restrictive covenant contained in this Section 8, the Grantee, or its assignee or successors shall notify in writing the Grantor and the State of Washington Department of Ecology, or successor agency and obtain approval of the proposed change in use in accordance with WAC 173-340-440(5) or any amendment thereto. The Grantor shall take any action necessary with regards to this Section 8 to carry out an approval or other decision of the State of Washington Department of Ecology or successor agency.
 - 8.4. Grantee, or its successor or assign, shall provide notice to the State of Washington Department of Ecology or successor agency of the party's intent to convey any interest in portions of the property identified in this Section 8.
 - 8.5. If the Grantee is in default of the conditions and terms of this Section 8, Grantee shall hold harmless, defend, and indemnify the United States, its employees, agents, and representatives from and against any suit, claim, demand, or action, liability of judgement, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) to the extent caused by such default.
 - 8.6. The Grantor for itself and its successors and assigns hereby grants to the Washington State Department of Ecology or successor agency, and its designated representatives, the right to enter the property at reasonable times for the purpose of evaluating compliance with a cleanup action plan and other required plans relating to this Section 8, including the right to take samples, inspect any remedial actions taken at the site, and to inspect records.

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington

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to a rebar marker; thence South 88° 55'52" East a distance of 147.234 meters (483.05 feet) to the TRUE POINT OF BEGINNING.

Excepting a parcel described as follows;

A parcel of land in Government Lots 1 and 2 and the Southeast Quarter of the Northwest Quarter of Section 2, Township 25, North Range 4 East, Willamette Meridian, more particularly described as follows;

Commencing at a Point of Reference being the quarter corner common to Section 2 and 11, T 25N, R 4E, WM; thence N14° 47'42" W, 908.789 meters [2981.59 feet] (2978.33 deed)] to a corner of an existing N.O.A.A. property identified by a concrete monument, stamped "U.S. Navy No. 10"; thence N 01° 03'02" E on the westerly line of the existing monumented N.O.A.A. property line a distance of 292.078 meters (958.26 feet) to the TRUE POINT OF BEGINNING being identified by a tack in a lead plug with a brass washer stamped L.S. 11691; thence continuing N 01°03'02"E along said line a distance of 22.26 meters (73.05 feet); thence N 88° 55'52' W a distance of 186.51 meters (611.91 feet) more or less, leaving the westerly line of the existing monumented N.O.A.A. property line, to a rebar marker, thence N 61° 35'41" W a distance of 10.269 meters (33.69 feet) to a rebar marker, thence N 75° 49'24" W a distance of 6.114 meters (20.06 feet) to a rebar marker, thence N 70° 07'49" W a distance of 14.289 meters (46.88 feet) to a rebar marker; thence N 84° 43'34" W a distance of 26.737 meters (87.72 feet) to a rebar marker, thence N 29° 46'35" W a distance of 60.847 meters (199.63 feet) to a rebar marker and the Easterly margin of Sand Point Way NE (County Road No. 1283); thence S 12° 53'32" E along said margin a distance of 133,393 meters (437.64 feet) to rebar marker; thence N 51° 13'00" E a distance of 44.534 meters (146.11 feet) to a rebar marker; thence North 73° 27'01" E a distance of 18.425 meters (60.45 feet) to a rebar marker; thence N 80° 01'06" E a distance of 42.602 meters (139.77 feet) to a rebar marker; thence S 88° 55'52" E a distance of 147.234 meters (483.05 feet) to the TRUE POINT OF BEGINNING.

The herein described property is conveyed by the Grantor to the Grantee subject to the reservations, exceptions, restrictions, conditions and covenants herein expressed and set forth unto the Grantee, its successors and assigns, forever.

The Grantor expressly excepts and reserves all remaining oil, gas, and mineral rights and deposits in said land to the Grantor, without rights to surface entry, from the hereinbefore described property, in accordance with all applicable laws.

Pursuant to CERCLA, 42 U.S.C. Section 9620(h), the United States Department of the Navy prepared an Environmental Baseline Survey (EBS), revised March 1, 1996, for the herein-described property. On May 16, 1996, the State of Washington issued a No Further Action Determination. The United States Department of the Navy on April 15, 1998 approved a Finding of Suitability to Transfer (FOST) for Sand Point. The United States Department of the Navy issued Addendum One to the FOST on August 25, 1998 and Addendum Two to the FOST on March 9, 2000. Grantce acknowledges that it has received copies of the EBS and FOST and Addendum's One and Two, together with all documents attached thereto. Remedial action taken by the Navy is set forth in the Base Realignment and Closure Cleanup Plan (BCP), Close Out Version, dated "revised February 28 1996".

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington

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Pursuant to CERCLA, 42 U.S.C. Section 9620(h), the United States covenants and warrants to Grantee, its successors and assigns, that all remedial action, response action or corrective action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken prior to the date of said transfer.

Pursuant to CERCLA, 42 U.S.C. Section 9620(h), the Grantor, on behalf of the Department of Navy, covenants and warrants to Grantee, its successors, and assigns that any additional remedial action found to be necessary to protect human health and the environment with respect to any bazardous substance stored, disposed of, or released on the herein described property prior to the date of transfer shall be conducted by the United States.

Pursuant to CERCLA 42 U.S.C. Section 9620(h), the Grantor reserves a right of access to the property in any case in which a response action or corrective action is found to be necessary after the date of this conveyance for the purpose of, but not limited to, monitoring, investigation, sampling, testing, or removal of any hazardous substance(s). The Grantee shall be provided reasonable notice of any action requiring access to the property and the Grantor shall take all reasonable steps to minimize the disruption of the Grantee's use of the property.

For the purposes of this deed, the term "hazardous substance" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any Federal or Washington State environmental or safety law.

The Grantee, by its acceptance of this deed does covenant and agree for itself, and its successors and assigns, forever, as follows:

Recreation Use Covenants

- 1. This property shall be used and maintained for public park and recreation purposes in perpetuity, as set forth in the program of utilization and plan contained in the December 1999, application submitted by the City of Scattle for the Acquisition of a Portion (Building 27 and surrounding land) of the Naval Station Puget Sound, a copy of which is on file with the Scattle City Clerk. Said program and plan may be amended from time to time at the written request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application.
- 2. The Grantee shall, within six (6) months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreation area and has been acquired from the Federal Government for use by the general public.
- 3. The property shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency without the prior approval of the Secretary of the Interior in writing. Any such disposition shall assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions contained herein. However, nothing in this provision shall preclude the Grantee from providing recreational facilities and services compatible with the approved application, through concession agreements entered into with third

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington Page 3 of 11

USA Deed

After recording return to:

Helaine Honig Scattle Law Department 600 Fourth Avenue, 10th Floor Scattle, WA 98104-1877



E1939524

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This cover page is attached for recording purposes and is not a part of the instrument.

Title: QUIT CLAIM DEED

Reference number of related documents: NOT APPLICABLE

Grantor:

UNITED STATES OF AMERICA, acting by and through the Department of the Interior

02-25049062 (ptn)

Grantee :

THE CITY OF SEATTLE

Legal description:

LC Tax Porcel

1. Abbreviated form: G.L. 1, G.L. 2, Section 2, TWP 25N, RNG 4E, W.M.

2. Additional legal description is on page 1 of document

Exhibit A to DPR Arena Sports Agreement

Parcel 2, adjusted - Naval Station Puget Sound (Sand Point) King County, Washington

QUIT CLAIM DEED

THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior, acting by and through the Director, National Park Service, under and pursuant to the power and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 337), as amended, and particularly as amended by Public Law 485, 91st Congress, and regulations and orders promulgated thereunder (hereinafter designated "Grantor"), for and in consideration of the perpetual use of the hereinafter described premises as and for public park and public recreation area purposes, by the City of Seattle, Washington (hereinafter designated "Grantee"), does hereby convey and quit claim to Grantee, and to its successors and assigns, all Grantor's right, title and interest, together with all after-acquired title of the Grantor therein, in and to property containing approximately 8.2382 acres, including improvements appurtenant thereto, located in King County, Washington, and identified as Parcel 2, adjusted, as described as follows;

A parcel of land in Government Lots 1 and 2 and the Southeast Quarter of the Northwest Quarter of Section 2, Township 25, North Range 4 East, Willamette Meridian, more particularly described as follows;

Commencing at a Point of Reference being the quarter corner common to Section 2 and 11, T 25N, R 4E, WM; thence N14° 47'42" W, 908.789 meters [2981.59 feet] (2978.33 deed)] to a corner of an existing N.O.A.A. property identified by a concrete monument, stamped "U.S. Navy No. 10"; thence N 01° 03'02" E on the westerly line of the existing monumented N.O.A.A. property line a distance of 292.078 meters (958.26 feet) to the TRUE POINT OF BEGINNING being identified by a tack in a lead plug with a brass washer stamped L.S. 11691; thence N 01°03'02"E along said line a distance of 156.448 meters (513.28 feet) to a cased 3"x3" concrete monument with tack in lead, referred to as 10-1: thence continuing N 01°03'02"E a distance of 71.242 meters [233.73 feet (228.23 deed)] to a point on the Inner Harbor Line of Lake Washington as established by the Washington Harbor Line Commission; thence N 88° 39'57"W along said Inner Harbor Line a distance of 54.748 meters (179.62 feet) to an angle point; thence continuing along said Inner Harbor Line N 49° 19'57"W a distance of 25.487 meters (83.62 feet); thence leaving said monument Inner Harbor Line S 26° 33'13" W a distance of 82.049 meters (269.19 feet) to a point from which said monument 10-1 bears S 81° 49"33"E a distance of 110.56 meters (362.73 feet), being identified by a 5/8" iron rebar with cap marked P.A.C.E., L.S. 11691, hereinafter referred to as rebar marker; thence N 88° 56'17"W a distance of 76.810 meters (252.00 feet) to a tack in a lead plug with a lead plug with a brass washer stamped L.S. 11691; thence S 01°02'49"W a distance of 147.850 meters (485.07 feet) to a rebar marker, thence N 61° 35'41" W a distance of 10.269 meters (33.69 feet) to a rebar marker, thence N 75° 49'24" W a distance of 6.114 meters (20.06 feet) to a rebar marker, thence N 70° 07'49" W a distance of 14,289 meters (46.88 feet) to a rebar marker, thence N 84° 43'34" W a distance of 26,737 meters (87,72 feet) to a rebar marker, thence N 29° 46'35" W a distance of 60.847 meters (199.63 feet) to a rebar marker and the Easterly margin of Sand Point Way NE (County Road No. 1283); thence South 12° 53'32" E along said margin a distance of 133.393 meters (437.64 feet) to rebar marker; thence N 51° 13'00" E a distance of 44.534 meters (146.11 feet) to rebar marker; thence North 73° 27'01" East a distance of 18.425 meters (60.45 feet) to a rebar marker; thence North 80° 01'06" East a distance of 42.602 meters (139.77 feet)

Parcel 2, Adjusted, Naval Station Puget Sound (Sand Point) Deed of Conveyance City of Seattle, Washington

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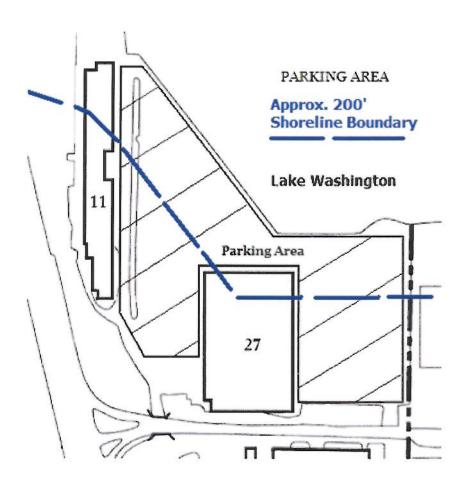
Exhibit B

Legal Description

Warren G. Magnuson Park Building 27 located on a portion of the property described as follows:

Commencing at a Point of Reference being the quarter corner common to Sections 2 and 11, T 25N, R 4E, WM; thence North 14° 47' 42" West, 908.789 meters ([2981.59 feet (2978.33 deed) to a corner of an existing N.O.A.A. property identified by a concrete monument, stamped "U.S. Navy No. 10"; thence North 01° 03 '02" East on the westerly line of the existing monumented N.O.A.A. property line a distance of 292,078 meters (958,26 feet) to the TRUE POINT OF BEGINNING being identified by a tack in a lead plug with a brass washer stamped L.S. 11691; thence North 01°03' 02"East along said line a distance of 156.448 meters (513.28 feet) to a cased 3" x 3" monument with tack in lead, referred to as 10-1; thence continuing North 01° 3' 02" East a distance of 71.242 meters [233.73 feet (228.23 deed)] to a point on the Inner Harbor Line of Lake Washington as established by the Washington Harbor Line Commission; thence North 88° 39' 57"West along said Inner Harbor Line a distance of 54.748 meters (179.62 feet) to an angle point; thence continuing along said Inner Harbor Line North 49° 19' 57"West a distance of 25,487 meters (83,62 feet); thence leaving said monument Inner Harbor Line South 26° 33' 13" West a distance of 82.049 meters (269.19 feet) to a point from which said monument 10-1 bears South 81° 49' 33" East a distance of 110.56 meters (362.73 feet), being identified by a 5/8" iron rebar with cap marked P.A.C.E., L.S. 11691, hereinafter referred to as rebar marker; thence North 88° 56' 17" West a distance of 76.810 meters (252.00 feet) to a tack in a lead plug with a brass washer stamped L.S. 11691; thence South 01°02' 49"West a distance of 147.850 meters (485.07 feet) to a rebar marker, thence North 75° 49' 24" West a distance of 6.114 meters (20.06 feet) to a rebar marker, thence North 70 °07' 49" West a distance of 14.289 meters (46.88 feet) to a rebar marker, thence North 84° 43' 34" West a distance of 26.737 meters (87.72 feet) to a rebar marker, thence North 29° 46' 35" West a distance of 60.847 meters (199.63 feet) to a rebar marker and the Easterly margin of Sand point Way NE (County Road No. 1283); thence South 12° 53' 32" East along said margin a distance of 133.393 meters (437.64 feet) to a rebar marker; thence North 51° 13' 00" East a distance of 44.534 meters (146.11 feet) to a rebar marker; thence North 73° 27' 01" East a distance of 18.425 meters (60.45 feet) to a rebar marker; thence North 80° 01' 06" East a distance of 42.602 meters (139.77 feet) to a rebar marker; thence South 88° 55' 52" East a distance of 147.234 meters (483.05 feet) to the TRUE POINT OF BEGINNING.

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Exhibit D

PUBLIC BENEFIT REQUIREMENTS

Each year throughout the Term of this Agreement, Concessionaire agrees to provide the following Public Benefits:

I. Community Event Space

- A. As used in this Agreement, "Community Event" means an event that is offered by a nonprofit corporation and that is (i) open to the public and (ii) similar in kind to events that are customarily offered by Seattle Parks and Recreation or other City departments at the Premises.
- B. Approximately 27,000 square feet of the Premises, depicted on Attachment 1-A hereto, shall be available for rent for Community Events on a short-term basis, not to exceed two consecutive weekend days. For rentals occurring between April 1 and September 30, the rental rate for the 27,000 square feet shall not be more than 150% of \$115.00 per hour (in 2008 dollars and adjusted annually by the percent increase in the CPI, in the manner described in Section 4.2 of the Agreement), excluding necessary special costs (e.g. set-up/break-down, additional waste collection, portable bathrooms); at all other times, Concessionaire's standard rental rates shall apply. During the April 1 through September 30 period, Concessioniaire shall reserve such space upon request provided the reservation is made at least six (6) months prior to the requested use date and the space is not being held for another Community Event. At all other times, the space will be available on a first come, first served basis, if not being used for Arena Sports programs. In any case, the notification requirements described in Section 8.2 shall apply.
- C. Approximately 55,000 square feet of the Premises (comprised of the 27,000 square feet described in I.A. above, plus an additional 28,000 square feet), as depicted on Attachment 1-B hereto, shall be available for rent during the three-day Labor Day and Memorial Day weekends for Community Events. The rental rate shall be the sum of the rate stated in Section I.A. for the 27,000 square foot area and Concessionaire's standard rental rate for the additional 28,000 square feet. Concessioniaire shall reserve such space upon request provided the reservation is made at least six (6) months prior to the requested use date and the space is not being held for another Community Event.
- D. Community Events shall be recreation-oriented and compatible with park purposes, as reasonably determined by the Superintendent.
- E. Community Events must meet traffic and parking standards established by the City and provide adequate reserved parking for Concessionaire's customers participating in on-going Arena Sports programs during the events.
- II. The City may request that Concessionaire construct an additional set of permanent restrooms and supporting facilities specifically to serve the Community Event areas. Any

Exhibit D

such construction would be pursuant to a separate agreement that would permit Concessionaire to offset of up to 100% these construction costs in the initial years of the Agreement.

III. Free programs

- A. Concessionaire agrees to allow Seattle Parks and Recreation to sponsor a youth indoor soccer league at the Premises each year, which could host up to 2,000 youth.
 - The City shall be responsible for all marketing, registration, admistration and operations of the league, including officiating and online registration.

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- The league shall only be run by Seattle Parks and Recreation or the Associated Recrecation Council ("ARC"), or its successor.
- Space will be made available for 6 hours per week on weekends during daytime hours, generally from May through September.
- B. Concessionaire shall provide 150 hours of facility use each year for at-risk youth, to be administered by Arena Sports Foundation in partnership with organizations such as Childhayen.
- C. Concessionaire shall provide 30 hours of facility use each year for developmentally disabled youth soccer, to be administered by Arena Sports Foundation in partnership with organizations such as Special Olympics or Tops Soccer.
- D. Concessionaire agrees to provide 336 hours of free practice time for soccer teams associated with Seattle Pacific University, Seattle University and other small local Universities without extensive sports facilities.

IV. Scholarships. Concessioniare shall provide 30 individual scholarships each year for use of the facility including the Health and Fitness areas, to be awarded by Seattle Parks and Recreation. The scholarships shall be for no more than 50% of the program costs; participants shall be required to contribute to their program fees.

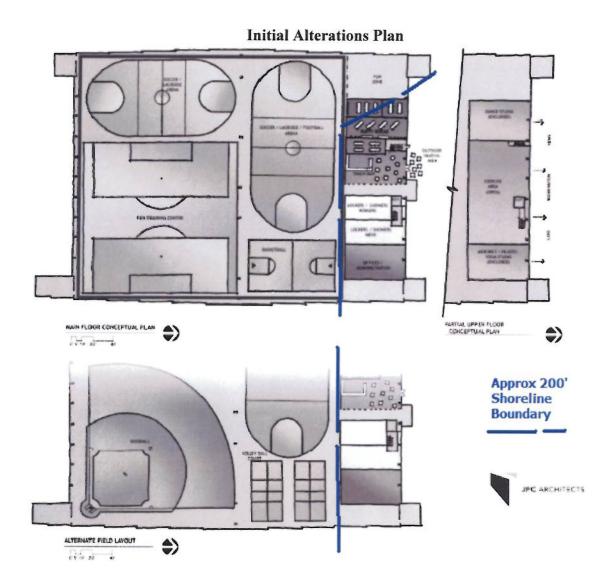
V. Reduced Fee Programs

- A. Concessioniare shall provide 500 hours of facility use each year for reduced-price programs (75% of standard Arena Sports pricing), to be administered by Arena Sports Foundation.
- B. Concessioniare agrees to provide 300 hours of field time discounted by at least 25% of standard Arena Sports rental pricing for neighborhood non-profit soccer clubs such as Laurelhurst/View Ridge Youth Soccer Club and others for practices

Exhibit D

and games during the Fall and Spring of each year at rates and times that Concessionaire negotiates each year with the soccer clubs.

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Shell Work

Exterior: 1) Re-roof existing roof deck, remove and repair any existing damaged roof sections; 2) Replace existing roof drainage system, including but not limited to roof drains, overflows, scuppers, gutters and downspouts; 3) Replace existing exterior windows with new windows, windows in hangar doors to single-paned windows; 4) Replace damaged exterior metal wall panels to match existing; 5) Replace damaged hangar door panels, field prep and re-paint all hangar doors; 6) Re-paint entire exterior shell; 7) Replace miscellaneous trim, fascias, soffits, etc. where damaged; 8) Replace existing hardware on exterior man doors, provide panic hardware at exits; 9) Provide additional exit doors as required.

<u>Interior</u>: 1) Re-paint interior walls, columns and ceilings; 2) Replace any damaged wall panels visible from the interior; 3) Provide additional men's and women's restrooms as required by the City of Seattle to serve Arena Sports' proposed active recreation uses; 4) Provide drinking fountains as required by code; 5) Replace/modify existing fire sprinklers to conform to SBC standards; 6) Remove and demolish existing equipment; 7) Prep and repair the surface of the concrete floor/slab.

Structural: 1) Complete seismic upgrades per structural engineering analysis.

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Exhibit E

<u>Electrical</u>: 1) Upgrade electrical service panels to current code standards; 2) Remove abandoned electrical equipment and fixtures; 3) Inspect existing hangar bay fixtures and retain if complies with current code standards, add exterior and interior lighting as necessary for code standards.

Miscellaneous: 1) Complete asbestos abatement.

Tenant Improvements

Construct indoor athletic playfields, support areas such as locker and shower rooms, restroom facilities, customer service, food and beverage service, retail space, offices and storage. Include open air mezzanine for health and exercise studios. Construct stairs and elevator to provide ADA access to mezzanine level. Demolish existing office and workshop wings on each end of the hangar.

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